

Dave Sundberg
Box 1, Malta Id. 83342
March 1, 2000

RECEIVED

MAR 08 2000

WATER RIGHTS
SALT LAKE

Robert L. Morgan
Utah State Engineer

Re: Clear Creek commissioner

Dear Mr. Morgan:

On Nov. 5, 1996, Lee Sim wrote me a letter which said in the last half of the third paragraph: "One of the purposes of the commissioner is to ensure that an annual report is prepared which documents the distribution of water. It is our belief that the annual report will help us to evaluate the distribution practices to ensure they are in accordance with the decrees". I had requested among other things, the minutes of a meeting with UDWR, IDWR and the Clear Creek water users at the Naf Store on May 23, 1996 and the minutes of a meeting in Malta on June 13, 1996. Paragraph 4 of Mr. Sim's Nov. 5 letter says no official minutes were kept of either meeting. Your office recieved several requests that the June 13 meeting be recorded, however, most of the way through the meeting Mr. Sim told us he had forgotten to turn on his microphone.

Patrick Brown, attorney for Harold Jones, advised him to request that the meeting be recorded because your office might fail to keep accurate minutes. Brown also advised Harold to record the meeting because your office might somehow fail to do so. Fortunately Harold recorded the meeting. Unfortunately your office's failure to do so was predictable. In the 1997 meeting there were no minutes, no financial report and no commissioner's report or records of any kind. In 1998 Vern did not attend the meeting and there was no commissioner's report and no records were made until June, 17 1998. This was for the water year 1997.

It was agreed in the 1998 meeting that there was no reason why Vern could not have a completed record two weeks after the water season ended. The meeting was recorded and Larry said quite clearly that he would see to it that Vern had it done. In the 1999 meeting there was no commissioner's report and Vern had no records. Mr. Sim said that they had not made any minutes from the recording of the 1998 meeting so Bob Fotheringham read some notes which he had taken, some of which he could not even remember what they referred to. It is difficult to develop confidence in an agency that operates on this level of efficiency.

In 1999 and 2000 your agency has made some effort to find out what some of the facts are on Clear Creek and I very much appreciate those efforts. I am enclosing some comments about Vern's records since 1995. After the Nov. 20, 1996 hearing in Brigham City on Kempton's and Campbell's applications to appropriate more water I sent you a bunch of information. In the packet was a copy of Vern's 1995 records, however I am enclosing some pertinent pages for your quick reference. In May 1996 Vern testified in SRBA court that in 1995 each day he measured each stream and his total flow was derived by adding all of the streams together.

In 1995 Vern's record of "Idaho water for 1995" starts out

May Fri 19 Holmgren 20.95 Ray 3.05
and then goes down the list showing each day some numbers with fractions which add up to a whole number.

May 20	Holmgren	26.95	Ray 3.05	total 30
May 21	Holmgren	31.95	Ray 3.05	total 35
May 22	Holmgren	36.95	Jeff 3.05	40

He shows the creek jumping exactly 5 cfs each day. On May 25 Ray Jones had a hydrologist come out and look at the creek, which caused quite a scare with

the Kemptons and Vern ran down about 10:00 a.m. and turned Ray some more water. While he was turning the water to Ray we went up and talked to him. Larry Kempton and Mont Campbell showed up while we were there and we talked about the fact that the creek had been fairly high for the last few days and we estimated that there was about 70 cfs at that time. So for May 23 and 24 Vern shows 70 cfs divided up in numbers with fractions that add up to 70.0.

From June 2 - July 16 he shows all whole numbers.

From July 17 - August 5 he shows Holmgren N.9 and Ray or Jeff 3.1 which always adds up to a whole number.

I have enclosed a map of Clear Creek and the property it crosses in Utah with Naf Irrigation Company's diversions numbered starting at the top of the Creek (South) and drawn in yellow. My ditches are pink.

On July 30 1995 we videotaped a measurement at headgate #1 where the portable measuring board is used 100 yards or so below the gauging station. The total stream up there was only 12 cfs. We taped measurements at the Idaho weir until August 5 and there was less than 12 cfs every day.

Vern shows on July 30 Holmgren 15.9 Jeff 3.1 at the Idaho weir and 10 cfs going to Larry Kempton in headgate #5. That is not possible when there is only 12 cfs at the gauging station. That is a total of 29 cfs. If there was 29 cfs all of the water should have been in Idaho. When the total flow drops to 36.2 cfs the whole creek should go to Idaho for the 12 day run or until it drops to 17 cfs.

Obviously Vern was not measuring the water. He let Mont and Larry take it until he got caught. Larry did have some water on July 30 running on his 40 acres in section 25 which has no right to be irrigated. On July 30 I asked Vern how much water was in the creek and he said he had not looked for a few days but he thought there was about 40 cfs. He obviously was not keeping track and when we caught him he made up a list of total flow and divided it up into 3.1, N.9 and something for Utah. If he had measured Holmgren's water it would not have been N.9 every day.

We taped measurements of most of the diversions on the creek until Sept. 2. On Sept. 2 Vern shows 7 cfs going to Ray. There was barely a trickle. Vern charged us almost a month's wages while there was no water. The creek is supposed to go on turns when there is 6 cfs at Ray's headgate #9.

In 1996 Bob Hope was appointed watermaster over Clear Creek in Idaho, although some of the users had Vern turn their water as some kind of deputy watermaster, others required Bob to measure theirs personally. Bob's report says "Numbers by Kempton are amounts he knew they were supposed to have". Although Vern shows Arimo and Stewart receiving their full amount every day starting May 13, On May 23 Reid Stewart and I videotaped the fact that no water had reached within 1 mile of Stewart and Arimo's diversion. On that day UDWR and IDWR had a meeting at the Naf Store with the water users and after the meeting Reid Stewart, Tim Luke, Frank Hitchcock and I went down and looked at this problem. Obviously Vern knew that the water should be there or his record wouldn't show it. His record was intentionally false.

In 1996 Vern billed me for about 250 acre feet of water. In reality we sprinkled 40 acres once and about half of it twice so I figured we put less than $\frac{1}{2}$ foot of water on those 40 acres and I flooded about 15 acres once. We lost the crop of barley on about 70 acres that year while Vern kept records showing how much water I was "supposed to have". Ray Jones did not get the water he was "supposed to have" either. Meanwhile Kempton and Campbell wet all of their ground and enough was running off of Kemptons to irrigate their 40 acres in section 25 by the state line which has no right to be irrigated. The water that ran off of Kempton's 40 ran over 280 acres of Mont Campbell's in Idaho and was running a fair ditch full down to Jeff Sessions at Round Mountain. On June 15 when the creek was so low that Sessions didn't have any Idaho water I videotaped the stream running off of Kempton's 40 at the state

line and across Campbell's 280 down to sessions' ditch. I think I gave you a copy of that tape at the protest hearing for Kempton's new water right applications on Nov. 20, 1996. Of course Vern kept records of how much water Campbell and Kempton "were supposed to have". The water which is diverted in Utah is not supposed to go to Campbell's ground in Idaho or to Session's ground in Idaho. Vern did not record where the water really went, he recorded where it was supposed to go. I don't see why we should have to pay a water commissioner to record false reports.

On May 15, 1996 in the Idaho SRBA court an agreement was made between Kemptons, Campbell, Sessions and Joneses and an order was made accordingly by the court which states in paragraph 3 that "the parties and witnesses shall not deliver, curtail or adjust their own diversions or those of other users and shall have all such work done by Lavern Kempton". In paragraph 4, "Lavern Kempton shall provide and Dave Sundberg shall have all reasonable access to review and observe how Lavern Kempton is administering the waters on Clear Creek, and to check diversions, measurements and other matters relating to the administration of water on Clear Creek."

While Vern was running water on to his new ground and onto Campbell's new ground and down to Sessions' place at Round Mountain, Campbell, Kempton and Sessions refused to allow me on their property to look at anything. Vern refused to show me how he measured water and they tore the side out of my ditch by Scoffield's house so no water could go down it (it ran back into the creek) and Sessions (Scoffield) had a lawyer threaten to sue me if I tried to fix it or look at my headgate. Bob Fotheringham told me on Jan. 27, 2000 that he understands that Scoffield has a restraining order against me. They have told that lie to several people. It is not true. All they have is a bunch of threats.

Vern didn't produce a record of 1997 water until June 17, 1998 and I have not analyzed it. I was not allowed to look at any diversions in Utah so I can't comment on it. I was elected watermaster in Idaho and Vern and I were supposed to meet at the Idaho weir each morning and most mornings he did so there is not much difference between his records and mine as to what went to Idaho. I have no way of knowing how much should have gone to Idaho. I lost a lot of money in 1996 while Vern took my water so I didn't plant anything in 1997. That was good because I got very little water. I did go up and tape measurements of my ditch which can show that the amounts shown in Vern's report are not accurate.

1998

An interesting item in Vern's 1998 report on the page that shows my water he starts out showing 0.06 cfs each day. I don't know how you could measure or regulate 0.06 cfs in a 3 ft. wide Cipolletti weir, but I do have a right for 0.06 cfs. It appears that Vern was writing down what "he knew I was supposed to have" each day. In the water meeting on Feb. 8, 2000 Mont and Larry explained very clearly that Mont had a stream in his ditch #1 on May 2, 1998 which was big enough to create serious problems when it got down to Larry's ditch #5. There is no way that Vern could measure the creek to determine when there was 20 cfs without seeing that most of the water was going out Mont's ditch. Apparently Vern knew that the water was "supposed to" be going to Ray Jones because that is where his report shows it going. Vern must have felt like it was not supposed to be going to Mont and Larry because he shows that neither one took any water before it went to Idaho. Or else he just wanted Ray to have the bill. Obviously his report is false.

In 1998 Vern did not turn the water to Idaho so I did. I have explained this in a letter to Lee Sim on Jan. 31, 2000. Please read that letter. Besides that problem, when the creek drops down to 36.2 cfs after the high run-off it should all go to Idaho until it drops down to 17 cfs at the gauging station. As a result of my turning the water to Idaho on May 2, a meeting

was held between UDWR, IDWR and Vern and me on June 18, 1998. Among other things that were arranged, Vern was to distribute the Utah water before 10:00 a.m. each day so that I could do the Idaho side. Idaho's 57% of 36.2 is 20.6 so when the flow at the Idaho weir gets down to 20 cfs all the water should be turned to Idaho. On July 14 there was 18.6 cfs at the Idaho weir at 11:00 a.m. so I went looking for Vern who was at the Naf Store. He said he had not had time to look yet but he would look at the creek before the day was over. The arrogant look on his face told me that he knew very well that there was not 36 cfs in the creek. The next morning there was 27.6. Vern's record shows the creek had 53.02 four days in a row and then dropped to 34.75 cfs on July 14, the day I told him to turn it to Idaho. In late summer when the creek has dropped off to this stage it is very stable and does not suddenly drop 19 cfs on the day that I catch Vern and tell him to turn it to Idaho. It drops a little each day. Vern was apparently writing 53.02 as an excuse for not letting the water go to Idaho. When there was only 27.6 on July 15, it was easy to see that he had taken a few extra days in Utah.

On May 2 and again on July 14, the two days that the water went to Idaho Vern was keeping false records, and had been for at least a few days. He was not only cheating the Idaho water users but he was also writing false records cheating the Utah users. He knows that he is not delivering water where it is supposed to go and is writing false reports to cover his fraud.

On May 7, 1998 Doug Jones and Kelly Christensen of IDWR measured the Idaho weir with a flow meter. I have enclosed a copy of their measurements. The flow meter showed 23.35 cfs, I measured 24.1 cfs and if you look at Vern's report for that day, he shows 21.13. Vern and I were both within 10% of the flow meter by using the existing conditions at the Idaho weir. Bob Fotheringham told me on Jan. 27, 2000 that Utah is not going to criticize Vern's measurements until Idaho replaces the Idaho weir. I believe that IDWR and Idaho's watermaster are able to make measurements at the Idaho weir with reasonable accuracy. Vern could also make reasonable measurements if he were honest. I had reason to call Vern's bluff twice in 1998, on May 2 and July 14. It was not the Idaho weir's fault that he was charging the water to Ray and delivering it to Mont on May 2, and it was not the Idaho weir's fault he showed 53.02 on July 13 when there was less than 30 in the creek.

1999

In 1999 Bob Fotheringham fixed up the automatic recorder at the guaging station. I have ^{MADE} an analysis of the graph from the recorder starting on June 22, 1999. I have extrapolated between the days flow meter measurements were made to show approximately how much was in the creek each day. Alongside of each day I have compared Vern's 1999 report of the total amount in the creek and how much he shows diverted above the guaging station and what his report says was delivered to Idaho. Then I show how much I measured in Idaho.

In 1999 Vern's record starts out vaguely similar to mine until June 5. From June 5 - June 22 Vern shows practically no fluctuation in the stream at the Idaho weir. From June 5 - June 22 I measured fluctuations between 45 cfs and 94 cfs. The guaging station shows great fluctuations during that time.

On June 22 the guage height was 1.81'. We don't have any flow meter data for that guage height. From 1.53 - 1.38 the average increment was .01=1 cfs. Vern's 1997 report has some pictures of diversions at the back. Picture #2 shows the creek at the guaging station on 5-8-98 when there was about 25 cfs. It shows on the West side there is a flat bank a few inches higher than the water covered with vegetation. When the creek has more than 40-50 cfs it runs up on the bank and is about 50% wider than it is at low water. So when the guaging station measures more than 1.50' the correction factor will increase considerably to account for the wider stream and the fact that the water moves faster. When Doug Jones measured the Idaho weir at 23.35 cfs the average velocity was 2.13 ft. per second. In 1997 Allen Merritt and Gary Funderburg measured 89 cfs by the guaging station and the average velocity was

CLEAR CREEK WATER JUNE22-JULY29 1999 ACCORDING TO DIFERENT MEASURERS

GUAGING STATION
gage height flow meter

VERN KEMPTON
total above guage Idaho weir

DAVE SUNDBERG
Idaho weir

JUNE						
drops in after noon	22	1.81		101.9	10.5	61
	23	1.72		95.9	10.5	55
	24	1.67		95.9	10.5	55
	25	1.64		95.9	10.5	55
	26	1.60		91.9	10.5	51
	27	1.53		79	6.7	51
	28	1.53?51	(44.39)	72	6.7	44
	29	1.51	44	68	6.7	40
	30	1.50	43	58.3	6	36.4
	1	1.48	41	51.9	6	30
JULY	2	1.47	40	51.9	6	30
	3	1.48	39	48.3	3.2	28.1
	4	1.45	38	48.2	3.2	28
	5	1.42	34	36.4	3.5	18.9
	6	1.38	(29.49)	18.9		18.9
	7	1.35	28	18.9		18.9
	8	1.35	28	20		20
	9	1.33	27	23.1		23.1
	10	1.30	25.8	22		22
	11	1.28	25	22		22
very little daily fluctu- ation	12	1.26	(24.97)	21.7		21.7
	13	1.22	21.8	21.5		21.5
	14	1.20	20.3	21.3		21.3
	15	1.20	20.3	18		18
	16	1.18	18.7	18		18
	17	1.18	18.7	16.4		16.4
	18	1.18	18.7	16		16
	19	1.13	(14.80)	16		16
	20	1.10	12	16		16
	21	1.08	11	16		16
	22	1.07	10.4	14	2.5	
	23	1.06	9.6	12.2	1.7	
	24	1.06	9.6	9.8	1.4	
	25	1.07	10.3	9.8	1.4	
	26	1.07	10.3	10.8	1.4	
	27	1.06	(9.60)	10.8	1.4	
	28	1.05	8.8	10.8	1.4	
	29	1.05	8.8	9		
	Aug 27	.94	(3.85)			

The numbers in parentheses in the flow meter column were measured with the flow meter. The other numbers in that column were extrapolated using the following factors.

JUNE 28	JULY	JULY	JULY	JULY
1.53 = 44.39	6 1.38 = 29.49	12 1.26 = 24.97	19 1.13 = 14.8	27 1.06 = 9.6
JULY 6 - 1.38 = 29.49	12 - 1.26 = 24.97	19 - 1.13 = 14.8	27 - 1.06 = 9.6	27 - .94 = 3.85
.15 = 14.9	.12 = 4.52	.13 = 10.17	.07 = 5.2	.12 = 5.73
therefore .01 = 1 cfs	.01 = .38 cfs	.01 = .78 cfs	.07 = .74	.01 = .47

The timer did not measure 24 squares for 24 hours. In order to come out with the dates and times written on the graph, before July 6 each day was 26 squares approximately. After July 6 each day was about 29 squares.

more than 4 ft. per second. I believe that the correction factor for extrapolating to 1.81' guage height on June 22 would be at least 2 cfs per .01' on the guage above 1.50'. In other words there would be additional 60 cfs above 44 for a total of 104 cfs at 1.81'.

Allen Merritt waded and measured 89 cfs and I am confident that Bob Fotheringham is at least as brave as Allen Merritt so if there were less than 100 cfs Bob would have waded out and measured it but he says there was too much for him to try.

Vern's report shows 101.9 total with 10.5 cfs diverted above the guaging station, so that only leaves 91.4 cfs. I can't imagine Bob being scared of 91.4. Vern's report shows 61 cfs at the Idaho weir but I only measured 45. That was not a difficult measurement to make. There was 9 cfs in the Jones-Sessions ditch in a 38 Cippolletti weir which leaks about 1 cfs around the South side, 4 cfs in Hoskins' ditch in a good 3' Cippolletti which Merritt and Funderburg rated at 100% accurate in 1997 and 32 cfs going through the 10" Cippolletti which Doug Jones rated at 23.35 while I measured 24.1 and Vern measured 21.13 in 1998. I believe my measurement June 22 was reasonable accurate. I believe Vern's measurement of 61 cfs was not even made and not very accurate.

I believe when the guage shows 1.81' there is at least 100 cfs in the creek. Vern shows 101.9. So there should have been 58 cfs at the Idaho weir. I believe at least 13 cfs of Idaho's water was being diverted in Utah on June 22, 1999. A similar amount was illegally diverted in Utah each day except the day Fotheringham came out. Idaho has 56 cfs decreed so by only letting 45 cfs go to Idaho 20% of Idaho's water rights were not being filled on June 22, while Kempton and Campbell were taking their water.

From June 22 - June 27 the creek dropped from 1.81'-1.53' at the guaging station. 1.53' is about 46 cfs. Vern show 51 cfs at the ~~guaging~~ Idaho weir and $79 - 6.7 = 72.3$ cfs at the guaging station on June 27. I measured 19.6 cfs at the Idaho weir. My measurements at the Idaho weir show a direct correspondence with the guaging station while Vern's report shows very little similarity.

On June 28 Fotheringham Measured 1.53' = 44.39 cfs at the guaging station. Apparently Vern misunderstood him because he shows 44 cfs at the Idaho weir. It is interesting that the day Fotheringham came out there was more water at the Idaho weir. I measured 26.1 cfs which is almost exactly 57% of 44.39. Apparently Vern knew how much was "supposed to" be in Idaho and turned it down possibly while Fotheringham was measuring up at the guaging station. At 2.13 ft per second it would take 50 minutes to go 7000 ft from Larry's headgate to the Idaho weir. Vern could make that adjustment without too much fuss. The next day there was only 21 cfs at the Idaho weir again. Maybe if Fotheringham came out and watched Vern every day he would turn the water ~~where~~ where it is "supposed to" go.

From June 27 -30 the guaging station shows about 3 cfs drop. Vern shows it dropped 20 cfs during that time. He shows it dropped 15 cfs at the Idaho weir. I measured 19.6 on June 27 and 19 on June 30. It is very clear that Vern's report is not true.

On June 28 Fotheringham measured 44.39 cfs and on July 6 Scott Meeker measured 29.49 cfs. That is a total decrease of 14.9 cfs. Vern shows a total decrease of 53.1 cfs during that time. He shows a decrease of 25.1 cfs at the Idaho weir. That is not possible. Vern's report is not true. On June 27 I measured 19.6 cfs at the Idaho weir and assumed that I was going to lose the small stream in my ditch. Vern shows that I had 3.7 cfs, I don't think there was that much. Vern shows that I had water all the next week but if I did it was very little.

On July 8, all of the water was turned to Idaho. The guaging station measured 28 cfs. Vern's report shows no diversions above the station. I

measured 23 cfs at the Idaho weir. 5 cfs channel loss is a reasonable expectation between the guaging station and the Idaho weir. By July 14, 6.3 cfs was sinking. This increase is normal. As the creek banks give up their stored water and become drier the channel losses increase. On July 15, the guaging station showed the same as July 14, 20.3 cfs but only 11 cfs reached the Idaho weir. That indicates that somebody took some water in Utah. I don't believe the channel ever loses 9.3 cfs. When the guaging station was working in the 1960s Guy Sundberg figured it lost 7 cfs from the guaging station to Idaho in the spring and slightly less than that when the creek was dropping in late Summer.

If we accept 5 cfs as a reasonable loss and the creek should all go to Idaho when the total diversions drop to 36.2 then it should have all gone to Idaho when the guaging station measured $5 + 36.2 = 41.2$ cfs or on July 1. Vern did not turn it until July 8. If we accept 5 cfs channel loss then Idaho should have recieved:

July 1	36 cfs	Instead they got	July 1	17 cfs
2	35		2	17
3	34		3	13
4	33		4	13
5	29		5	12
6	24		6	12
7	23		7	12
	<u>214</u> 24hr. cfs			<u>96</u>

So during the first week in July Vern allowed Campbell and Kempton to take around 118 24hr. cfs, or 230 acre ft. of Idaho water. Most of this would have gone to Holmgren.

Looking at my record, while Holmgren was cutting hay he took very little water until June 28 when he started taking everything that was available so he could revive his second crop. If you water it once you can usually make second crop alfalfa. When you flood clay ground like Holmgren's the first irrigation can take quite a bit of water but the second time across you can only sink about 6 inches.

My record shows Holmgren had 159 24hr. cfs in July measured at the Idaho weir. On the days I show 7-8 cfs very little reached his fields 2 miles down stream. He cuts about 500 acres of Alfalfa. Last year he lost most of his second crop while Kempton and Campbell took his water. He could have revived another 400 acres with 200 acre ft.

On July 6 I did not go to work because Kemptons complained to the county that I had noxious weeds on my place and the county weed people brought a truck out and looked around and left without spraying anything. When they left it was late enough in the morning that I stayed home and walked the creek. I wrote a letter to Tim Luke in Boise, here is a copy, which explains my interpretation of the situation that day. Now I have forgiven Bob because I understand he was trying to operate the guaging station incognito.

On July 16, 1999, no water was at the Idaho weir so I went up to the measuring board at headgate #1 and it measured close enough to 17 cfs so that I didn't argue. My place had been 18 days without water and there was not enough going to Idaho to be beneficial. Obviously somebody in Utah was taking water on July 15 but 1 or 2 days wasn't worth arguing about. On July 18 I took a stream and Clear Valley Ranch took a stream which caused the guage to drop 4 cfs on July 19. For some reason Vern shows 16 cfs going to Idaho until July 21. He was not measuring anything because there was only 11 cfs at the guaging station on July 21. He shows that I had water until July 28, but I'm sure he shut mine off on July 25 which is why the guage shows a little jump there.

It appears that Vern's report does not show anything that represents any reality. It appears that he just made up a fictitious stream flow and divided it up on paper. It appears that on July 6 when Scott Meeker talked to Vern

he failed to write down 29.49 and when he made up his fictitious stream flow 18.9 was stuck in his mind instead of 29.49. When he made up his fictitious stream flow he collapsed it from 101.9 on June 22 down to 18.9 cfs on July 6. It appears like on and around July 6 he had 18.9 stuck in his brain and and could not figure out where to put it so he put it every place for a few days. I am guessing that he made up his fictitious stream on July 8 or 9. On July 8 he turned the water to Idaho and on July 9 he apparently measured the water at the Idaho weir because he has a correct measurement that day. Vern does know how to measure water. Other than that day his numbers are not even close to representing the actual stream. The 18.9 dilemma probably blew his mind and made him desperate enough to go out and make a measurement.

Concerning my letter to Tim Luke, in the first paragraph "I looked at the creek and found most of it going to Campbell and a fair stream of water running off of Kempton's." The small stream in my ditch was probably not worth reporting so we can give Vern credit for not showing it. Campbell had a big stream which should have been reported. The water which was running off of Kempton's 40 was running across the road to Campbell's ground in Idaho. Neither Kempton's 40 nor Campbell's Idaho ground has water rights. Since Vern has been water commissioner Mont has planted alfalfa on his 280 acres in Idaho. While Holmgren lost his second crop Campbell used Kempton's "waste water" to revive his 280 acres after pasturing the first crop in June. He got an excellent second crop. Campbell probably took at least 300 tons of alfalfa from Holmgren while Vern wrote his fictitious report to cover it up.

Kemptions run several hundred acre feet of water across the road to their Rice Creek desert. Kemptions haven't really got anything planted over there so most of that water went on to June grass and crested wheat grass or weeds. So they didn't really get much benefit except the joy of taking somebody else's water. It is hard to tell how much water was sent to Sessions down on Round Mountain because most of it crosses Campbell's 280 so far from the road that you can't see it without trespassing.

In 1996 on May 23, at the Naf Store, Sim and Fotheringham met with Tim Luke and Frank Hitchcock from IDWR and the Clear Creek water users. In the meeting Steve Holmgren explained to Reid Stewart that as the creek goes through his place it has formed so many channels that it is imposible to get water down to Stewart or Arimo Corp. That day I went with Stewart and looked at his ditch up through Holmgren's for about a mile and found no water. Vern shows that Stewart and Arimo recieved "the amounts that he knew they were supposed to have."

In 1997 the Idahoans elected me watermaster. The third day after the water went to Idaho, Holmgren still wouldn't let any water go past him so I walked up Stewart's ditch and removed all of the dams until he had a stream of water which reached Stewart's pond in about 4 hours. Holmgren made complaints and we had meetings until Holmgren resigned himself to the fact that he can't take Stewart and Arimo's water anymore. I think now Holmgrens are happy to be done taking their neighbor's water.

The diference was this. As long as Vern was keeping false books, Holmgren took his neighbor's water and nobody got along. As soon as Idaho got rid of the dishonest watermaster, nobody takes other people's water and everybody gets along. The same thing is true in Utah. As long as the State Engineer hires Vern Kempton to write fictitious reports while his daddy wastes other peoples water there will be trouble. Mont Campbell could be honest if Kemptions weren't stirring him up promising to make him rich by helping him steal water. Even if the State Engineer maintains Vern long enough to destroy me and Joneses and get rid of us, there will still be trouble. Stealing water is a high stress occupation. Hundreds of thousands of dollars have been spent in Clear Creek on attorney's fees alone since Vern has been water commissioner. Hundreds of thousands of dollars in crops have been wasted while

Kemptions have been dumping our water onto their desert that they are too lazy to even plant. Campbell at least has enough ambition to plant something before he waters it.

If the State Engineer continues to hire Vern Kempton to prepare fictitious reports while his daddy wastes everybody's water, someday there will come a time when the State of Utah will have to spend lots of money on attorney's fees trying to justify the fraud which is being carried out under the State's authority.

Each year we have wasted most of the time in our water meeting listening to Larry Kempton and Mont Campbell shout reasons why the guaging station can not work and why it has never worked and why we have to trust Vern Kempton because he is the only person qualified to turn and measure water. With very little effort the guaging station was put into operation and the main thing it shows is that Vern does not measure the water or keep accurate records. Now we know why Larry and Mont have to shout so much and why they don't let anybody else talk. Now we know why they never want any kind of measuring device in the creek. Now we know why they don't like me carrying a camera. Now we know why they put signs up and won't let me on their land even though they agreed ~~xx~~ in court that I would be allowed to check all diversions. Now we know why Vern never furnishes records at the water meetings. Now we know why Vern just grunts and says "I don't know" whenever we ask him a question.

I would like to encourage the State Engineer to seriously consider hiring a water commissioner for the year 2000 who does not write fictitious reports and who delivers water according to the decrees. I believe that it would save a lot of money in future lawsuits and a lot of wasted crops. Utah is not benefitting from diverting water onto Campbell's Idaho ground or running it down to round mountain. Dumping our water onto Kempton's desert is not benefitting anybody. I believe that even Kemptions, Campbell and Sessions will be happier when their fraud is over with.

Sincerely,


David Q. Sundberg